LIBRARY
SUPREME COURT, U. S.

No 591

Office-Supreme Court, U.S.
FILED
OCT 30 1968
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

VIVIAN WALSH BARRON,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA

BRIEF FOR THE RESPONDENT

EARL FAIRCLOTH
Attorney General
State of Florida

EDWARD D. COWART
Assistant Attorney General
State of Florida

JESSE J. McCRARY, JR.
Assistant Attorney General
State of Florida

Counsel for Respondent
530 State Office Building
1350 N. W. 12th Avenue
Miami, Florida 33136

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATEMENT OF THE CASE	2
REASONS FOR NOT GRANTING THE WRIT	3
CONCLUSION	7
APPENDIX (Exhibit A and Exhibit B)	App. 1 and App. 2

TABLE OF CITATIONS

CASES

	Page
Chemical Corn Exchange Bank & Trust Co. v. Frankel, 111 So.2d 99, 101 (3rd D.C.A. Fla. 1959)	4
Easterday v. United States, 292 F. 664, 53 App. D.C. 387, (1923) Certiorari denied, 44 S.Ct. 181, 263 U.S. 719, 68 F.Ed. 523 (1924)	6
Dean v. United States, 246 F. 568, C.C.A. Ga. (1917)	7
Hickory v. United States, 151 U.S. 303, 38 L.Ed. 170, 14 S.Ct. 334, (1893)	6
Maxey v. United States, 207 F. 327, 125 C.C.A. 77 (Ark. 1913)	5
Short v. United States, 221 F. 248, 248 C.C.A. 104 (Minn. 1915)	5
Smythe v. New Providence Tp., 263 F. 481, (C.C.A. N.J. 1920)	5

STATUTES

Fla. Stat., § 92.38 (1955)	5

OTHER AUTHORITIES

32 C.J.S. § 618	6
32 C.J.S., *Evidence*, § 614 (1964)	6
20 Am.Jur., *Evidence*, § § 744-45	6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

VIVIAN WALSH BARRON,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at 207 So.2d 696, (3rd D.C.A. Fla. 1968). Order denying Petition for Rehearing was entered on March 26, 1968, said order is annexed hereto as Exhibit A

The Supreme Court of Florida denied Petition for Writ of Certiorari on May 31, 1968. A copy is annexed as Exhibit B. A Petition for Rehearing was filed in the Supreme Court of Florida on June 24, 1968.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

The State respectfully rephrases the Question Presented as stated by the petitioner to read as follows:

> WHETHER THERE IS A DENIAL OF DUE PROCESS IN A CONVICTION FOR FORGERY WHERE THE "STANDARDS" FOR COMPARISON USED ARE PROVED TO BE THE HANDWRITING OF THE DEFENDANT TO THE SATISFACTION OF THE TRIAL COURT?

STATEMENT OF THE CASE

On November 24, 1965, ten informations were filed charging the petitioner with forgery. (R. 773-784). On January 17, 1966, the petitioner filed motions for discovery and to quash the informations. (R. 797-803). On January 24, 1966, the motion to quash was granted and on that day, new informations were filed. (R. 805-827). On the same day, the petitioner was arraigned, waived trial by jury and pled not guilty. (R. 804).

On February 23, 1966, petitioner withdrew her waiver of jury trial. (R. 829). The trial court further granted certain motions for discovery. (R. 830-832). Trial was had between September 19th and 23rd, 1966 and petitioner was found guilty. (R. 1-772). On September 23rd, 1966, petitioner was sentenced to five (5) years in the State Penitentiary. (R. 857-859).

During the trial, a handwriting expert testified concerning certain analyses he made. (R. 481-568). Objections were made to the standards used and the failure of the State to provide a copy of his analyses.

REASONS FOR NOT GRANTING THE WRIT

The instant petition filed in this cause does not pass upon a federal question. In effect, there has not been a denial of due process and therefore the petition before this court should be summarily denied.

It is the contention of the respondent that the record and the decision of the lower court is replete with evidence of due process and eminently correct. The petition raises only an evidentiary question which rested within the sound discretion of the trial judge.

The Third District Court of Appeal has followed the established standards of Florida Law, the constitutionality of which petitioner questions not.

The issue raised must be considered in the following context. Certain instruments were forged but there were not witnesses to the forgery. Evidence established that the accused had signed certain documents; i.e., the genuineness of petitioner's signature on the documents—standards for comparison—was proved. Is the State precluded from using these standards as a basis for expert witnesses' testimony as to whether the accused committed the forgery?

At the common law, the comparison of writing was "considered too uncertain to be accepted as trustworthy evidence in matters involving disputed signatures or writings." *Chemical Corn Exchange Bank & Trust Co. v. Frankel*, 111 So.2d 99, 101, (3rd D.C.A., Fla. 1959).

In the interest of promoting the administration of justice, this harsh rule of the common law was abolished by enactment of what is now § 92.39, Fla. Stat. (1955). Ibid. The Statute provides:

> "Comparison of a disputed writing with any writing proved to be to the satisfaction of the judge to be genuine, shall be permitted to be made by the witnesses; and such writings and the evidence of witnesses respecting the same, may be submitted to the jury, or to the court in case of a trial by the court, as evidence of the genuineness, or otherwise, of the writing in dispute."

The aforementioned Statute of Florida complies basically with the Federal Statute related to the same area.

28 U.S.C., § 1731 provides:

> "The admitted or proved handwriting of any person shall be admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person."

It should be noted that the common law rule did not permit a comparison of handwriting unless the writing to be compared was properly in the case for other purposes than were comparison. *Maxey v. United States*, 207 F. 327, 125 C.C.A. 77 (Ark. 1913).

The Federal cases as in Florida changed this rule. See, *Smythe v. New Providence Tp.*, 263 F. 481, (C.C.A. N.J. 1920) *Short v. United States*, 221 F. 248, 248 C.C.A. 104 (Minn. 1915).

Additionally, respondent would point out that § 613 of 32 C.J.S. which deals with the limitation upon the admission of standards, is titled "Rule in Absence of Statute". In C.J.S., *Evidence*, § 614 (1964), the authors note that under Statutes, standards which are genuine may be admitted into evidence for comparison whether or not they are otherwise relevant or material to the issues. And in 20 Am. Jur., *Evidence*, § § 744-45, it is stated that where a signature is in dispute the modern trend and great weight of authority permits the admission of otherwise irrelevant documents solely for purposes of comparison if they bear the genuine signature of the person who allegedly signed the writing in dispute. See, *Hickory v. United States*, 151 U.S. 303, 38 L.Ed. 170, 14 S.Ct. 334, (1893).

A comparable situation was decided in the case of *Easterday v. United States*, 292 F. 664, 53 App. D.C. 387, (1923), certiorari denied, 44 S.Ct. 181, 263 U.S. 719, 68 L.Ed. 523, (1924). In *Easterday*, supra, the appellant forged certain checks on a company where he was the treasurer of a certain candy company. One J.F. Jack was at one time treasurer of the candy company but was not the treasurer at the time the checks were drawn. However, his name was forged to the checks. The checks were endorsed by the appellant as the current treasurer of the candy company. The Court, in deciding the issue stated the following:

> "There being ample testimony tending to show that Jack's name on check 'B' was forged by the defendant, checks A and C were then received in evidence, so that the jury might compare the handwriting in which his name appeared on them with that in which it appeared on check B, for the purpose of determining whether or not it was the work of the same person. In this there was no error. . ."

The allegation that there has been a denial of due process is totally without merit. Few, if any, federal courts have held that due process was not afforded under similar factual patterns. In *Dean v. United States*, 246 F. 568, C.C.A. Ga. (1917) the court was faced with a like problem as the petitioner here. In *Dean*, supra, the defendant was charged with altering a postal money order. The "standard" for comparison was a notebook containing personal memoranda, taken from the accused's possession. The Court in its wisdom had the following to say:

> "There was no evidence of the identity of the writer of the entries, other than the character of the book and the fact that it came from the person of the defendant... *When the book containing the entries is a personal memorandum book, such as the owner customarily keeps in his own handwriting, such as a diary or an order book, or a memorandum of a personal itinerary, we think the character of the book and the custom of the owner of such a book to write the entries in it himself circumstances sufficient to go to a jury, and from which they may infer, if satisfied of it, that the owner or possessor of the book made the entries in it.*" (Emphasis added).

A fortiori, it follows that the arrest records petitioner signed were of that class of documents petitioner would ordinarily sign while employed by the City of Miami, Police Department. This fact has not been contested at any stage during the litigation of this cause.

Further, the application for employment is the type of document that an individual would be expected to personally sign. Compare *Dean v. United States*, supra.

It is respectfully submitted that the exemplars used were proved to the satisfaction of the trial judge. The existing law was followed and the petitioner was not denied due process of law in any way.

CONCLUSION

The respondent submits that there was no federal question involved; moreover if this Honorable Court finds that a federal question was presented, the petition for the Writ of Certiorari should be denied since there is no showing of an abridgement of the petitioner's constitutional rights.

Respectfully submitted,

EARL FAIRCLOTH,
Attorney General
State of Florida.

EDWARD COWART
Assistant Attorney General
State of Florida

JESSE J. McCRARY, JR.
Assistant Attorney General
State of Florida

IN THE SUPREME COURT OF THE UNITED STATES
CASE NO. _____
VIVIAN WALSH BARRON,
Petitioner,
vs.
THE STATE OF FLORIDA,
Respondent.

COUNTY OF DADE : SS
STATE OF FLORIDA :

AFFIDAVIT OF SERVICE

I, JESSE J. McCRARY, JR., Assistant Attorney General, State of Florida, first being duly sworn according to law, do depose and say:

I HEREBY CERTIFY that three copies of Brief for the Respondent to the Supreme Court of the United States was served upon HONORABLE MILTON E. GRUSMARK, Attorney for Petitioner, 1674 Meridian Avenue, Suite 311, Miami Beach, Florida 33139, by mailing the copies of same to him by United States Mail, First Class postage prepaid, pursuant to Rule 33 of this Court, this 23rd day of October, 1968.

JESSE J. McCRARY, JR.
Assistant Attorney General

Sworn to and subscribed before me
at Miami, Dade County, Florida,
this _____ day of October, 1968.

NOTARY PUBLIC
State of Florida at Large
My Commission Expires: